

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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CLERK

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
JIRAD B. KINNEY,)
)
Respondent.)

BY JB
DEPUTY CLERK

Civil No. 5:15-cv-244

**PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS**

The United States of America, by its attorney, Eric S. Miller, United States Attorney for the District of Vermont, petitions this Court for an order enforcing one Internal Revenue Service (IRS) Administrative Summons served on the respondent, Jirad B. Kinney. In support, the United States avers the following:

1. Jurisdiction over this matter is conferred upon this Court by 26 U.S.C. § 7402 and 7604(a) and by 28 U.S.C. § 1340 and 1345.
2. The summoned person, Jirad B. Kinney, resides or may be found within the boundaries of this district at 181 Union Street, Springfield, VT 05156.
3. Linda J. McGuire is a Revenue Officer of the Internal Revenue Service, employed in the Small Business/Self-Employed Division of the IRS in Burlington, Vermont.
4. Revenue Officer McGuire is conducting an investigation for the purpose of collecting the tax liability of Jirad B. Kinney for the tax periods ending December 31, 2005, December 31, 2006, December 31, 2007, December 31, 2009, December 31, 2010 and December 31, 2011. See Exhibit A, Declaration of Revenue Officer McGuire ("McGuire Decl."). ¶ 2

5. In her capacity as an IRS Revenue Officer, Ms. McGuire is authorized to issue IRS summonses pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-IT, and Internal Revenue Service Delegation Order No. 4 (as revised).

6. Pursuant to the above-described investigation, on May 11, 2015 Revenue Officer McGuire issued an IRS administrative summons to Jirad B. Kinney directing him to appear before Revenue Officer McGuire on June 5, 2015 at 10:00 a.m. at the place identified in the summons. The summons directed Jirad B. Kinney to appear and to give testimony and produce for examination certain books, papers, records, or other data as described in the summons. *See* McGuire Decl. ¶ 3 and Exhibit B, Summons dated May 11, 2015 ("Summons").

7. Revenue Officer McGuire served an attested copy of the Summons by leaving it at the last and usual place of abode of the Respondent, Jirad B. Kinney, 181 Union Street, Springfield, VT 05156. *See* McGuire Decl. ¶ 4.

8. The Respondent, Jirad B. Kinney, failed to appear on June 5, 2015, and, to date, has failed to comply with the summons. *See* McGuire Decl. ¶ 5.

9. The testimony and documents described in the summons are not already in the possession of the IRS. *See* McGuire Decl. ¶ 6.

10. All administrative steps required by the Internal Revenue Code for the issuance of the IRS summons have been followed. *See* McGuire Decl. ¶ 7.

11. The testimony, books, records, papers, and/or other data sought by the summons may be relevant to the IRS's investigation. *See* McGuire Decl. ¶ 8.

12. No Justice Department referral is in effect within the meaning of 26 U.S.C.

§ 7602(d)(2) with respect to Jirad B. Kinney for the years under investigation. *See McGuire Decl.*

¶ 9.

13. In order to obtain enforcement of a summons, the United States must establish that the summons: (a) is issued for a legitimate purpose; (b) seek information relevant to that purpose; (c) seek information that is not already within the IRS's possession; and (d) satisfy all administrative steps required by the Internal Revenue Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

14. The attached Declaration of Revenue Officer Linda J. McGuire (Exhibit A) with the Summons (Exhibit B) establishes the government's *prima facie* showing under *Powell*.

WHEREFORE, the United States respectfully prays as follows:

A. That this Court enter an order directing the Respondent, Jirad B. Kinney, to show cause in writing, if any, why he could not comply with and obey the aforementioned IRS summons and every requirement thereof;

B. That this Court enter an Order directing the Respondent to fully obey the subject summons and each requirement thereof, by ordering the attendance, testimony, and production required and called for by the terms of the summonses, before Revenue Officer McGuire, or any other proper officer or employee of the IRS, at such time and place as may be set by the Revenue Officer or any other proper officer or employee of the IRS;

C. That the United States recover its costs incurred in maintaining this proceeding; and

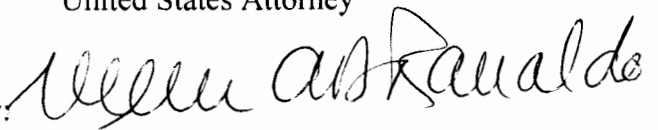
D. That the Court grant such other and further relief as the Court deems proper or justice may require.

Dated at Burlington, in the District of Vermont, November 17, 2015.

Respectfully submitted,

UNITED STATES OF AMERICA

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